



EMPLOYMENT TRIBUNALS (SCOTLAND)

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Case No: 4106707/2018 Hearing at Edinburgh on 4 and 5 March 2019

Employment Judge: M A Macleod (sitting alone)

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Anne Whyte

Claimant
In Person

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Two Skies Limited

Respondent
Represented by
Mr M Stephen
Solicitor

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JUDGMENT OF THE EMPLOYMENT TRIBUNAL

The Judgment of the Employment Tribunal is that the claimant's claim for unfair dismissal fails, and is dismissed.

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REASONS

Introduction

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1. The claimant presented a claim to the Employment Tribunal on 6 June 2018 in which she complained that the respondent had unfairly dismissed her from her employment with them.

2. The respondent submitted an ET3 response in which the claimant's claim was denied. In particular, the ET3 asserted that no dismissal had taken place, and that the claimant had in fact resigned from her employment.

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3. A hearing was fixed to take place commencing on 4 March 2019. The claimant appeared and represented herself. The respondent was represented by Mr Stephen, solicitor.

ETZ4(WR)

4. Each party produced a bundle of documents, to which reference was made throughout the hearing. For ease of reference, in this Judgment, any document produced by the claimant will be prefixed “AW”, and any document produced by the respondent will be prefixed “R”. There was some overlap between the two bundles and in the event that a document has been produced in both only one reference will be given herein.
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5. The claimant gave evidence on her own account.
6. The respondent called three witnesses:
- Adam McIntosh, Managing Director;
 - Catriona Sterling, Office Assistant; and
 - Dorothy McIntosh, Director.
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7. On the basis that dismissal was not admitted, the claimant led her evidence first.
8. Based on the evidence led and the information provided, the Tribunal was able to find the following facts admitted or proved.
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Findings in Fact

9. The claimant, whose date of birth is 9 September 1964, commenced employment with the respondent on 27 May 2013.
10. The respondent is a small, family-run business manufacturing jewellery and related articles.
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11. The claimant was appointed following interview by the then directors of the respondent, namely Mr McIntosh, Mrs McIntosh (his mother) and Richard Bennett, who was also Operations Manager at that time. She was employed to work as the Office Manager, based at the office at Craigencait Farm. The claimant’s contract of employment (R29ff) confirmed her job title as Office Manager, and referred to her job description in Appendix 1 to the
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document (which was not produced). She worked four days (32 hours) each week, and received a salary of £17,920 per annum.

12. The claimant's duties were mainly bookkeeping, invoicing, responding to emails, maintenance of personnel and financial records and acting as a Personal Assistant to Mr McIntosh. She worked in a small office, in which Mr McIntosh and Mr Bennett were also located. The respondent also had use of a meeting room, known as the Treehouse, which was, literally, a tree house in the grounds of the farm. They also ran a shop on the Royal Mile in Edinburgh.

13. The respondent was, in the spring of 2018, considering how they could raise funds to purchase the farm buildings, which they currently leased. On 10 April 2018, Mrs McIntosh sent an email to Mr McIntosh, which he, in turn, forwarded to the claimant (AW5), with the heading "Fwd: message from mum". The message read:

"will discuss with you in 5 mins

*You will have bills due since there will be a whopping amount to pay on corporation tax if that money is in the account at the end of March. **However as long as you act quickly that could really help us.** What I would suggest is that you contact Judith urgently and ask her if you can draw down on some of the debt that Two Skies owes you and have that sum backdates for the end of the financial year. **If you do a letter requesting this payment dated 28th March then the payment can be included in the annual accounts ending March 2018. Alternatively Anne could do a backdated cheque.** I would check what percentage you can take without rocking the boat on any other bills that might be due. If you take £80k out for example (and tax is already paid on this) then you could say to the Hollands that we have already got £80k in the kitty and we are on track for getting a further £80k by the end of the year. We could find £40k between all of us for the remaining amount. **If you don't do this around £25k will be lost to HMRC.***

Obviously it also means that those funds are available to help pay off Richard if we are going down this route but I think we would want to do that in stages.

Need to be in touch quickly with Judith.”

5 14. “Judith” referred to Judith Pritchard, the respondent’s accountant, from whom advice was to be sought. “The Hollands” referred to the farm owners, with whom some discussion was ongoing about the purchase of the building. The first sentence of the email – “will discuss with you in 5 mins” was the comment added by Mr McIntosh to the claimant; the remainder of
10 the message comprised the forwarded text from his mother.

15 15. Mr McIntosh then approached the claimant in the office. He referred to the terms of the email and said that the respondent wished to use their money in the most tax-efficient way. The claimant said words to the effect that she would not be prepared to defraud the Revenue. Mr McIntosh interpreted this as an accusation by her that he was attempting to defraud HMRC (Her Majesty’s Revenue and Customs). The conversation did not last long after that, but was not constructive and Mr McIntosh made clear his unhappiness at what the claimant had said to him. Two other members of staff were present in the office during this conversation, namely William Streeter,
20 Operations Assistant, and Angel Dryland, Retail Lister/Assistant.

25 16. At that date, Mrs McIntosh was on holiday in Egypt for some two and a half weeks. She was unable to recall in evidence when she returned from holiday, but following her return, a meeting was set up to take place between herself and Mr McIntosh to discuss a number of matters. That meeting did not take place until 10 May, owing to the difficulties they experienced in co-ordinating their diaries. Mrs McIntosh works three days a week for a different business, in Edinburgh, and is therefore only available on a limited basis; and Mr McIntosh, again unable to recall specific dates, believed that he had gone abroad to India for one of the business trips he
30 would take from time to time to seek new materials for the business.

17. A note of this meeting, which took place in the Treehouse on 10 May, was produced at R38 (AW12a). The note was prepared by Mrs McIntosh, who had her laptop with her and took notes during the meeting, tidying them up later.

5 18. Under the heading "Anne", it was noted:

"Adam informed Dory [Mrs McIntosh] that there had been an incident with Anne where she had accused Adam, in front of the other staff, of defrauding HMRC. Adam outlined what had happened – that confidential financial information relating to his affairs had been raised publicly in relation to a query about extracting some of the money in his director's loan account.

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Adam said that this is not the first time that Anne discusses confidential matters. Junior staff have complained to him that Anne frequently discusses confidential salary information.

Staff have also complained about a number of other issues relating to Anne:

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- *General negativity – saying that Etsy is a waste of time and demeaning the work that Angel carries out. Also complaining how boring her work is and affecting the moral (sic) of the office*

- *Critical about the work of other staff members – particularly Natalie – in front of others*

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- *Complaining about lack of help and then complaining about Hannah being hired and saying that she was not needed*

- *Singling out members of staff (Cat) and discussing her in front of others. Cat subsequently resigned because of this and a number of similar incidents.*

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- *Setting a bad example inappropriate complaining – and using her personal phone which is against the company rules.*

It was agreed that the latter points are performance issues and should have been raised as a warning at the time.

5 *It was agreed that her behaviour over Adam's query about extracting some of his funds was entirely inappropriate. If she had concerns over this she should have raised them privately with one of the directors who would have reassured her that there was nothing untoward and that Judith had been fully consulted.*

It was agreed that this warranted at least a written warning."

10 19. Ms Pritchard is then noted to have joined the meeting, and discussions took place about the financial state of the company, the prospects of being able to purchase the farmhouse and the valuation placed by Mr Bennett on his shareholding, for which he wished compensation.

15 20. Finally, the issue of the claimant's conduct was raised with Ms Pritchard: *"highlighted the position of Anne with Judith. Discussion on whether this constituted gross misconduct and disciplinary policies consulted. Agreed that this was a serious breach and Anne should be made aware of the seriousness of the allegations in case she wanted to would prefer to walk away with a clean record. Judith said she could do payroll and bookkeeping if there was need for help during any disciplinary process (ie suspension)."*

20 21. Mr McIntosh then called the office and asked the claimant to attend at the Treehouse to meet with himself and Mrs McIntosh. She had anticipated that she would be meeting with them that day, in order to discuss staff pay rises, cost of living increases, GDPR issues and the resignation of Catriona Sterling. She did not know that she was to be asked about the issues which were raised with her in relation to her conduct.

25 22. A note of that meeting was taken by Mrs McIntosh, largely following the meeting rather than during it (R41/AW12b). The notes state:

"The directors felt that this [the planned meeting about the list of items expected by the claimant] could not take place since the issues that were raised in the director's meeting about Anne's conduct had to be dealt with.

30 *Adam explained to Anne said (sic) that we had serious concerns because of breaches of confidentiality. These constituted:*

1. *An incident on the 10th April where Anne had publicly discussed Adam's private finances in front of other staff and made a defamatory accusation that Adam was attempting to defraud HMRC.*
2. *Adam also said that he had received complaints from staff that Anne had openly discussed confidential staff salaries and conditions in front of others.*
3. *That Anne had discussed Cat's job in front of other staff members in a way that distressed Cat.*

Anne denied the allegation that she had made the accusation about defrauding HMRC. She did not deny breaches of confidentiality.

Adam said that this accusation, together with disclosure of his finances, had been made in front of him and other staff so there was sufficient evidence to go down the disciplinary route and, given the nature of what had happened, we would be taking this very seriously. Anne was given two options. She was asked whether she would prefer us to go ahead with the disciplinary process or where (sic) she would prefer to resign with a clean record. She opted to resign and handed over her keys and computer passwords."

23. Mr McIntosh started the meeting quite calmly, but during the course of his remarks he became agitated and started to speak about other matters unrelated to what they had agreed would be discussed. He became red in the face. Mrs McIntosh intervened to suggest that he calm down and only discuss those matters which were relevant.

24. During the course of the meeting, Mr McIntosh referred to the allegations as amounting to gross misconduct, or possibly gross "miscontract". He accepted he suffers from an occasional tendency to mix up his words, which may have led to his use of this phrase when meaning gross misconduct.

25. Following the meeting, the claimant returned to the office. Catriona Sterling was in the office when she entered. She told Ms Sterling that she had "quit". Ms Sterling, who at that point was working her notice of termination, replied that that made "two of us". The claimant said that it did, but that she

would not be working her notice. She left her keys and her password, and went home.

26. Shortly afterwards, soon after 5pm, Mr McIntosh was in the office when the claimant's husband and daughter arrived and entered. The claimant's husband spoke to Mr McIntosh in a manner he found threatening, suggesting that if the claimant were not given a redundancy payment they would take the company to court. He sought to persuade Mr McIntosh to confirm that he had "fired her", several times. He denied this and assured him that if the claimant wished to return the following morning she would be welcome to do so. He also said that he could not discuss confidential staff matters with a member of her family but that her position was open. Mr McIntosh was shaken by this encounter.

27. At 8.58pm that night, the claimant emailed Mr McIntosh (AW9):

"Further to our unscheduled meeting at 4pm today, 10th May 2018, I write to advise that I am NOT accepting being dismissed for Gross Misconduct from my five year employee position as Office Manager at Two Skies Limited.

I have spoken to my solicitor this evening and have copied her in to this email.

I await your response.

Anne Whyte"

28. Mr McIntosh replied to that email at 10.42pm the same evening (AW10):

"Dear Anne,

Today's meeting had been rescheduled for a number of days and was timed to fit in with Dory's ability to come over to the farm to discuss a number of issues – including serious issues that had been raised about your conduct. A reminder of the meeting was given this morning.

These issues about your conduct were discussed this afternoon and at the end of the meeting you tendered your resignation, which was accepted and

noted in the records of the meetings at 4.50PM. when you returned to the office you also informed the other staff you had 'quit'.

5 *All of the issues that were raised with you were discussed with an employment lawyer prior to the meeting. Since you have resigned from your post, and we have accepted this resignation it is not a question of dismissal.*

I will be in the office all day tomorrow if you wish to discuss anything. However, I am not at liberty to discuss your position with your husband or daughter. It is also not appropriate for them to ask for you to be made redundant when you have in fact resigned.

10 *Yours sincerely,*

Adam McIntosh"

29. The claimant replied at 11.20pm the same night by email (AW11):

"I would like to see my letter of resignation signed by me dated today. I DID NOT sign anything.

15 *There were no minutes being taken at the meeting by either you or Dory. I know that there is a history of doctored minutes within this company regarding Rachel Hindle (Morrison), Jacki Winter and also regarding Richard Bennett and this will be easily proven if necessary.*

20 *When you say that 'Today's meeting had been rescheduled for a number of days and was timed to fit in with Dory's ability to come over to the farm to discuss a number of issues' A disciplinary meeting has to be prearranged with all parties being made aware as to why the meeting is taking place. There is a legal protocol following Company policy which was amended and added to Dropbox only today 10th May 2018 (I printed a copy) which clearly*
25 *states that everything has to be done in writing.*

*I was informed by email on **Wednesday** 9th May 2018 at 4.16pm on my day off, that your mother was coming out to the farm on **Friday** 11th May 2018 this week to discuss cost of living rises for all staff. I was also told today by email at 10.29am that Judith the Accountant was coming to the farm **today***

10th May 2018 and that your mother and yourself were wanting to have a meeting with me at 4.00pm to 'catch up on various things'.

At no point before the meeting was I informed of the purpose of this meeting nor was I given the chance to have a witness present.

5 *You ARE constructively dismissing me because I refused to defraud the HMRC. Whatever way you look at it this is most certainly unfair and unlawful.*

I await the correct legal procedure which has clearly not been followed in this instance.

10 *I will not be discussing anything with you without legal council (sic) or witnesses present. I will be proceeding with further legal advice on this tomorrow.*

I have again copied my solicitor in on this email.

Anne Whyte."

15 30. Mr McIntosh considered the terms of this email and responded at 4.16pm on Friday 11 May (AW13):

"Dear Anne,

Further to our meeting yesterday, I am writing to advise that an investigation into alleged breach of confidentiality is to commence.

20 *You are further advised that due to the nature of the investigation, you are suspended from your normal place of work effective 9am Friday 11th may. During your period of suspension, you will remain on normal pay.*

The aim is to conclude investigations and decide on the appropriate course of action as soon as possible. You may be required to attend an investigatory meeting to allow us to gather evidence. We will write to you if
25 *this is the case.*

Please note that you are not entitled to be accompanied at any pre-disciplinary meeting.

Yours sincerely,"

5 31. Mr McIntosh took the decision that since the claimant had now written to him to say that she did not wish to resign, and since the respondent had not dismissed her, it would be appropriate to allow her to continue in employment but to suspend her pending an investigation into the allegations which had been raised with her on 10 May. He regarded it as the second time when they had told the claimant that they would proceed down the disciplinary investigation route, the first being at the meeting in the Treehouse on 10 May.

15 32. Mr McIntosh then wrote to the claimant on 23 May 2018 (AW15) to confirm that the respondent had gathered statements from witnesses and concluded their investigations, and therefore that she was invited to an investigatory hearing to be held on 31 May 2018 at 2pm, at Craigencaft Farm. She was advised that she could put her side of the case and question the witnesses, and also that she could be accompanied by a trade union representative or a work colleague.

20 33. The claimant replied on 30 May 2018 (AW16):
"Ref your email dated 23rd May 2018 sent to my personal email address at 16:06.

As previously advised by my solicitor Mr Graham Reid of Charles Wood & Son in correspondence with yourself on 15th May 2018 at 14:59.

25 *The position is that on 10th May 2018 at a meeting called on a calculated and pre-meditated pretext you **summarily dismissed** me from the employment of Two Skies Limited.*

I will therefore not be attending any 'investigatory meeting'."

34. Mr McIntosh sought to clarify the position by emailing the claimant on 30 May in reply (AW17):

"Dear Anne,

You have not been summarily dismissed. You remain an employee although are currently on paid suspension pending an investigation into allegations of gross misconduct. As you know an investigatory meeting has been arranged for tomorrow at 2pm and we would like for you to attend so we may have the benefit of hearing what you have to say in response before a decision is taken in relation to disciplinary action. If you do not attend a decision will be taken and you will be informed in writing. Please confirm whether or not you will be in attendance.

Yours

Adam McIntosh"

35. The claimant did not attend at the investigatory meeting, which was conducted by Mrs McIntosh. She had written to witnesses to ask them questions, and had taken their answers into account when reaching her decision.

36. Following the hearing, Mrs McIntosh wrote to the claimant informing her of her decision (AW18), and enclosing a letter setting out that decision (AW19a). She concluded that while she considered that the claimant had made an accusation that Mr McIntosh was seeking to defraud the HMRC, and had been guilty of revealing confidential pay information to staff within the office, there was some mitigation in that she clearly believed that that was what Mr McIntosh was intending to do. Accordingly, she confirmed that she had concluded that the claimant was guilty of gross misconduct but that a final written warning should be issued to her.

37. The claimant was notified of her right to appeal against this decision, but did not exercise that right.

38. On 6 June 2018, the claimant presented her claim to the Employment Tribunal seeking a finding that she had been unfairly dismissed by the respondent.

39. Following her departure from the respondent's employment, the claimant has made efforts to identify and seek alternative employment. She had an interview with Streets Agency, an estate agency based in Kirkcaldy, on 7 January 2019, but was unsuccessful. She has been seeking work as a sales manager or working in a bank, based on her experience of working prior to her employment with the respondent, and has not restricted her search to the immediate area within which she lives. She has registered with an agency, Hudsons, offering mainly administrative placements.

40. The claimant registered for Universal Credit on 11 May 2018 and has received a payment, covering both her husband and herself, of £498 per month from July 2018 onwards. She has not secured any paid employment to the date of the Tribunal hearing.

Submissions

41. Mr Stephen consented to presenting his submissions for the respondent first, in order to allow the claimant to reply.

42. Mr Stephen tendered a written submission, to which he spoke. What follows is a brief summary of his submissions.

43. He referred to the evidence, and in particular to the evidence of the claimant, whom he described as extremely evasive, and accused her of not answering questions directly. He submitted that the evidence of Mr McIntosh and Mrs McIntosh should be preferred to that of the claimant, particularly in relation to the meeting of 10 May 2018. In particular, he pointed out that in her evidence, the claimant accepted under cross examination that nobody at the meeting had used the word dismissed or dismissal to her.

44. By contrast, Mr Stephen asked the Tribunal to accept the evidence of the respondent's witnesses as credible and reliable.

45. He continued by submitting that it did not matter exactly what the claimant had said to Mr McIntosh in their discussion on 10 April; Mr McIntosh had believed that she had defamed him, setting in train a sequence of events

which culminated in her resignation. When she made clear that she was not resigning she was reinstated but refused to return to work.

46. He referred to the claimant's evidence that Mr McIntosh had, during the meeting of 10 May, become very angry and had said to her "gross
5 miscontract, immediate effect, immediate effect..." These words fall far short of summary dismissal but at no time did anyone tell the claimant that she was being summarily dismissed.

47. He submitted that even were the Tribunal to find that the claimant had been
10 unfairly dismissed, no compensation should be awarded as she was immediately reinstated. There was no appeal against the purported summary dismissal, nor was there an appeal against the final written warning which was issued. Looking at the long list of jobs for which the claimant had expressed an interest, Mr Stephen said that it "beggars belief" that the claimant could not, as an efficient and intelligent individual, have
15 managed to find alternative employment, and if this were the case, that would mean she was effectively unemployable.

48. Mr Stephen invited the Tribunal to dismiss the claim.

49. The claimant also made a submission to the Tribunal. She addressed a
20 number of comments to me about the respondent's submissions, criticising the lack of accuracy in some of his assertions, and particularly criticising the witnesses called by the respondent for the accuracy and clarity of their evidence.

50. She asserted that it has always been her position that at the meeting of 10
25 May she was dismissed for gross misconduct with immediate effect, and that all correspondence (by the respondent) has been sent as an attempt to backtrack in order to follow the correct procedure. It spoke volumes, she said, that Angel Dryland and William Streeter had not been called as witnesses.

51. She submitted that the respondent had "concocted trumped-up minutes" of
30 the meetings, which she said had not been taken at the time, in order to suit

their own agenda. She described their evidence as contradictory, vague and unhelpful. She said that if something does not make sense that in her view it was not true.

52. The claimant invited the Tribunal to uphold her claim and award her
5 compensation.

Discussion and Decision

53. This is a case in which the Tribunal is essentially confronted with two starkly
divergent versions of events surrounding the termination of the claimant's
employment with the respondent. The central issue for the Tribunal to
10 resolve is which version is to be preferred, on the evidence heard, and thus
to determine whether the claimant was dismissed or resigned on 10 May
2018.

54. In my judgment, it is that date that is critical to the determination of this
case. If the claimant is correct, and she was summarily dismissed, it was on
15 that date that it happened. She does not assert that she was dismissed on
any other occasion, and it would be inconsistent with her fundamental case
to look to any events happening thereafter because by that date she was
dismissed and her employment came to an end.

55. The crucial question, in my judgment, is whether, in the meeting of 10 May,
20 the claimant was told that she was summarily dismissed, or, having been
invited to make a choice between undergoing a disciplinary investigation or
resigning with a clean record, she resigned.

56. It is clear that the claimant met with Mr McIntosh and Mrs McIntosh in the
Treehouse in the late afternoon of 10 May 2018. She went to the meeting
25 with the understanding that the subjects to be discussed related to a cost of
living rise for the staff, and issues relating to GDPR. She did not know that
she was to be asked questions about a disciplinary matter.

57. Mrs McIntosh, whom I found to be a straightforward and honest witness,
explained that she did not spend the whole meeting taking notes, but that
30 she had her laptop with her, and produced the minute of the meeting shortly

thereafter. The claimant accuses Mrs McIntosh of conspiring with her son and concocting a “trumped-up” version of the meeting in those minutes. In fact, the claimant’s case goes further than suggesting it was “trumped-up” (by which I understand her to mean that it was exaggerated); she is, in effect, alleging that the minutes are deliberately false, created in order to give an impression of the meeting which was not correct. In particular, she alleges that the section relating to the choice given to her between an investigation and resignation was a fabrication, and did not take place.

58. In my judgment, the minutes of the meeting provide a reasonably accurate summary of the discussion which took place on that day. I have reached this conclusion for the following reasons:

- As I have already indicated above, I found Mrs McIntosh, an experienced businesswoman, to have been an honest witness, and I accepted that the minute was an accurate representation of the discussion with the claimant;
- Mr McIntosh I also considered to be an honest witness. It is plain that the claimant was extremely unimpressed by Mr McIntosh, but in my judgment, while his bearing in giving evidence was nervous, this was not an indication that he was not being truthful. In my judgment, he was open about the way in which matters developed, and in particular accepted candidly that there were issues which he should have addressed at a much earlier stage with the claimant than he did.
- I have found no basis upon which it could be said that Mrs McIntosh and Mr McIntosh conspired to create a false minute of the meeting in order to create an incorrect impression. I can see no reason why they should wish to do so.
- It is of significance that in her own evidence, the claimant did not specifically allege that Mr McIntosh had told her that she was being dismissed, or summarily dismissed, nor indeed that those words were used at all. The highest point of her evidence on this was her

5 allegation that Mr McIntosh, having started to lose his temper and thump the table in front of him, had said something to the effect of “gross miscontract, immediate effect, immediate effect...”. That, as Mr Stephen submitted, falls far short of a clear statement to an employee that their employment is to end immediately. At best for the claimant, it is an incoherent expression of annoyance. In any event, the respondent’s witnesses denied that Mr McIntosh had used the phrase “immediate effect”, and I do not accept that he did.

10 • Immediately after the end of the meeting, the claimant to the office and told Ms Sterling that she had “quit”. I found Ms Sterling’s evidence on this to be believable. It is true that there was clearly a very uncomfortable relationship between the claimant and Ms Sterling, and the claimant suggested that this was the reason why Ms Sterling was not telling the truth. Ms Sterling resigned because she
15 did not wish to work with the claimant any longer, but when she found out that the claimant’s employment had ended, she withdrew her notice and continues to work there to this day. Her evidence was straightforwardly given, and was consistent with what she told Mrs McIntosh as part of the internal investigation.

20 • In the correspondence on the evening of 10 May, and the following day, Mr McIntosh recognised that the claimant did not wish to resign, and therefore proceeded to set up an investigation as they had indicated they would. Again, this is inconsistent with the claimant’s evidence that she had been summarily dismissed by the respondent
25 on the previous day. She asserts that this was because by then they had realised that they had made a mistake and needed to “cover their tracks”. I do not accept this, and do not consider that there is any evidence on which I could draw such a conclusion.

30 • Following the investigation, they did not dismiss the claimant, but issued her with a final written warning. Had the claimant accepted this, her employment would have continued.

59. In addition to these points, it is appropriate that I address the claimant's evidence. The claimant is clearly an intelligent and articulate person, who feels very deeply a sense of injustice about the way in which these events took place. However, she was not prepared to answer questions directly when she found it inconvenient to do so, and in general her manner was argumentative and hostile to disagreement.

60. She regularly placed strong emphasis upon what she actually said in the discussion of 10 April 2018 to Mr McIntosh, denying that she had accused him of attempting to defraud the HMRC. Here the claimant indulged in a degree of sophistry. Her response to Mr McIntosh was to tell him, with regard to the proposal which had just been emailed to her, that she would not be a party to defrauding the Revenue. She may not have made a direct accusation, but the clear implication of her statement was that that was what she understood Mr McIntosh meant her to do. It was reasonable, in these circumstances, for Mr McIntosh to have concerns about such a response in front of office staff.

61. I considered that the claimant's evidence on this matter was, ultimately, disingenuous, and that she was well aware that she was implying that Mr McIntosh was suggesting something inappropriate.

62. Accordingly, where there was a divergence between the evidence of Mr McIntosh and Mrs McIntosh on the one hand, and the claimant on the other, I preferred the evidence of the respondent's witnesses.

63. The conclusion I have reached is that the claimant was in fact guilty of doing what she accused the respondent of doing, namely backtracking after the event in order to create the impression that something else happened. I noted with interest that in her email of 10 May at 11.20pm, the claimant accused the respondent of "constructively dismissing me". While it may be that she was unsure of the meaning of this phrase, she had taken legal advice already, according to her earlier email. To allege that she was constructively dismissed is inconsistent with her having been summarily dismissed by the respondent.

64. Accordingly, it is my judgment that the claimant told the respondent on 10 May 2018 that she wished to resign, and that she was not summarily dismissed on that day by the respondent.

5 65. As a result, the claimant's claim for unfair dismissal must fail, and is therefore dismissed.

Employment Judge: Murdo A Macleod
Date of Judgement: 27 March 2019
Entered in register: 28 March 2019
And copied to parties

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